REVIEW OF THE VICTORIAN CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES

A WORK IN PROGRESS

Youthlaw’s Submission to the Scrutiny of Acts and Regulations Committee, Victoria Parliament
June 2011

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Part A – About this submission

1. About Youthlaw

Youthlaw is Victoria’s state-wide community legal centre for young people under 25 years. Youthlaw is located at Frontyard Youth Services in central Melbourne. This is a group of co-located services including crisis housing support, Centrelink, legal and health services, provided to young people who are homeless or at risk of becoming homeless.

Since its establishment in 2001, Youthlaw has been working to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

In essence human rights are central to the daily work of Youthlaw, in particular those articulated in the United Nations Convention on the Rights of the Child (“CRC”). The protection of human rights is of great relevance to children and young people as they are vulnerable to diminution of their rights and are often less able to assert and protect their rights. Legislative protection is crucial for practical realisation of their rights.

Youthlaw aims to empower young people to understand their legal rights and voice their concerns to law and policy makers. The Charter provides a mechanism to promote this empowerment.

Youthlaw is active in law reform and policy processes, where young people have the potential to feel the impact. Our submissions in law reform processes are within a human rights framework and articulate the rights, as set out international instruments and the Victorian Charter, which are affected by current laws, proposed amendments or new laws, policies and procedures.


2. Scope of the submission

Youthlaw welcomes the opportunity to contribute to the review of Victoria’s Human Rights Charter via this submission to the Scrutiny of Act and Regulations Committee (SARC).

We include some case studies of where the Charter has contributed to better outcomes for young people. The case studies demonstrate how human rights are being used to change not only the culture of government action and decision making on issues that affect children and young people, but also the approach of young people and their advocates.

In our assessment the review of the Charter presents an opportunity for the government to further strengthen human rights protections in Victoria by addressing the shortfalls of the Charter, by the inclusion of social, economic and cultural rights, particularly those drawn from the CRC, and expanding actions and remedies under the Charter.
Part B – Term of reference 1 & 2:

TOR 1. Whether the Charter should include additional human rights under the Charter, including but not limited to, rights under the –
(a) International Covenant on Economic, Social and Cultural Rights;
(b) Convention on the Rights of the Child; and
(c) Convention on the Elimination of All Forms of Discrimination against Women?
TOR 2. Whether the right to self-determination should be included in the Charter?

3. Which additional rights should be included?
Youthlaw takes this opportunity to stress the importance of protecting all human rights; however our submission focuses on a number of child specific rights articulated in Convention on the Rights of the Child (CRC) that are of particular importance to children and young people.

3.1 Addition of economic, cultural and social rights
The ability of the Charter to promote children’s rights effectively is undermined by the narrow scope of civil and political rights and exclusion of important social and economic rights in the Charter, in particular the right to education, health and housing.

CRC affirms the indivisibility and interdependence of all human rights by including civil and political, as well as economic, social and cultural rights within the same treaty. This is reflective of the way young people perceive their human rights. In our experience, they do not talk about human rights using an arbitrary division of rights as “civil and political” or “economic, social and cultural”. Rather they talk about human rights as a collective set of rights, many of which are interdependent and mutually re-enforcing.

Youthlaw submits the inclusion of ESC rights will provide a clear statement from government about the rights the community including young people expect to enjoy.

Recommendation 1 – That the Charter adds economic, social and cultural rights, as detailed under the International Covenant on Economic, Social and Cultural Rights.

3.2 Children’s rights

Specific experiences and needs of children
Youthlaw submits that rights specific to children and young people should be protected so as to reflect and address the special needs and experiences of children and young people. The specific inclusion of children’s rights will help ensure laws and policies are made with reference to CRC principles, the specific needs of children, and serves as powerful reminder that children alongside adults are holders of human rights.¹

CRC enshrines four key principles namely:
1. Non-discrimination (Article 2)
2. The best interest principle (Article 3) states that in all actions concerning children the best interests of the child shall be a primary concern.

3. The right to survival and development (Article 6) requires States to do everything within their power (“to the maximum extent possible”) to ensure the survival and development of a child.

4. The right to participation (Article 12) provides that a child who is capable of forming his or her own views has the right to express those views and have them taken into account in all matters affecting the child.²

There is a growing trend and awareness at both the international and domestic level of the need to specifically protect and promote the rights of children and young people, reflecting key principles in CRC. Well over twenty national constitutions have provisions dedicated to the protection of children’s rights.³ CRC enjoys a heightened status in South Africa in section 28 of the 1996 South African Constitution, which guarantees a series of expressly enumerated rights for children that are enforceable in the courts. The South African Constitution is one of the strongest examples of a new constitution that has drawn inspiration from the CRC.

The Victorian Charter includes provisions protecting children and families⁴ and children in the juvenile justice⁵, and criminal trial system⁶. However the Charter does not make specific reference to other rights of children as detailed in the CRC⁷, ratified by Australia but not incorporated in Australian law. While ICCPR and ICESCR rights apply to all people equally, which includes all children and young people, they are not designed to address the special needs and experiences of children and young people.

None of the Charter’s counterparts in the ACT, New Zealand, or United Kingdom introduce the ‘best interest principle’ in the way it is embedded in section 17(2) of the Victorian Charter:

“Every child, without discrimination, has the right to such protection as is in the best interests of the child and which is needed by reason of being a child.”

The ‘best interest principle’ requires the involvement of children wherever possible because best interests cannot be ascertained unless the child’s perspective is taken into account. The right to participation therefore has a significant impact on the efficacy of the best interest principle. The CRC (Article 12) states that a child who is capable of forming his or her own views has the right to express those views and have them taken into account in all matters affecting them.⁸ The weight given to the child’s view will be assessed according to the child’s age and whether the child has sufficient understanding and intelligence to understand fully what is proposed.⁹

Youthlaw believes the right to participation as outlined in section 18 of the Charter does not go far enough, providing that:

“The best interest principle requires the involvement of children wherever possible because best interests cannot be ascertained unless the child’s perspective is taken into account. This right therefore has a significant impact on the efficacy of the best interest principle. The CRC (Article 12) states that a child who is capable of forming his or her own views has the right to express those views and have them taken into account in all matters affecting them. The weight given to the child’s view will be assessed according to the child’s age and whether the child has sufficient understanding and intelligence to understand fully what is proposed.”

³ National Constitutions with a section dedicated to the rights of children: Albania, s54; Angola, s30&31; Brazil, s227; Colombia, s44; East Timor, s18-19; Ecuador, s47&50; Ethiopia, s36; Finland, s5(3); Gambia, s29; Ghana, s28; Honduras, s119-126; Malawi, s23, Moldova, s 50; Nicaragua, s75; Namibia, s15; Paraguay, s54; Portugal, s69&70; Romania, s45; Slovenia, s56; South Africa, s28; Uganda, s34; Poland, s72; Thailand, s53; Ukraine, s52; Switzerland, s11.
⁴ Charter ss 23.
⁵ Charter ss 24, 25.
⁶ Charter ss 24, 25.
⁹ Collins, T and Pearson, L, op.cit, p 3.

Youthlaw’s submission to the Review of Charter June 2011
Given young people under 18 years do not have the right to vote, we question how, under the Charter, they are being encouraged to participate in public life and have their opinions be taken into account in all decision making. The specific inclusion of a child’s rights to participate in all decision making impacting on them, would in our assessment, make the Charter more effective and inclusive.

In the VEOHRC’s 2008 Charter report, the Commission examined the human rights of children and young people, with a particular focus on their right to participate in decision making in community and government.10 Young people surveyed as part of the report said that they felt as though they only sometimes had a chance to have a say or be involved in things that happen in the local community, and hardly ever had a chance at state government level.11

**Recommendation 2** – That the Charter expands its focus to include rights detailed under the Convention on the Rights of the Child, in particular a right to participation (article 12 CRC) in order to:

- reflect the specific needs and circumstances of children and young people;
- increase children and young people’s awareness of their human rights and their right to free enjoyment of these rights;
- guarantee & enhance the participation of children and young people in public life; &

**Part C – Term of reference 3:**

**TOR 3:** Whether there should be mandatory regular auditing of public authorities to assess compliance with human rights?

4. Monitoring and auditing

Youthlaw strongly recommends the Victorian Charter mandate regular reporting by public authorities on steps they have taken to monitor and evaluate their processes for ensuring that their decisions, policies, service delivery and other actions are compatible with human rights. Such accountability mechanisms would strengthen the Charter’s ability to fully protect the rights of children and young people. These mechanisms could usefully be coordinated by VEOHRC.

Without such a mechanism in place, Youthlaw has been endeavouring to undertake some of this monitoring work. Youthlaw and other interested stakeholders have been keen to monitor new laws such as graffiti prevention laws (*Graffiti Prevention Act*), stop and search powers (*Control of Weapons Act*), and move on powers (*Summary Offences Act*) to ensure they are being implemented in a non-discriminatory, accountable, transparent and Charter compliant way.

In the coming years, the Charter will play an important role in monitoring the effects of these Acts and others like it, in order to ensure the protections available under the Charter can be

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11 Ibid, 116-117.

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used by those young people who may be inadvertently caught in the wide net that such legislation casts.\textsuperscript{12}

**Case Study - Graffiti Prevention Act monitoring forum**

In April 2009 Youthlaw hosted a forum to review the first year of the implementation of the *Graffiti Prevention Act 2007*, specifically its impact on young people and its effectiveness in reducing graffiti incidence.

The forum promoted the sharing of a range of perspectives on how the laws were being implemented, through anecdotal feedback, stories and experiences from young people, police, local councils, artists, community lawyers and youth workers. A number of young people reported to Youthlaw that they were caught in possession of graffiti implements on their way to a range of legitimate activities such as graffiti programs, legal graffiti walls and the painting of personal canvasses. Many young people between the ages of 14 and 18 years also reported being stopped by the police up to 3 or 4 times in the past, sometimes more.

These impacts on young people raise the question whether aspects of the law amount to an unreasonable limitation of Charter rights, disproportionate to the aim of reducing incidents of graffiti and improving social amenity. It must be considered whether there are less restrictive and more effective means available to achieve this, for example more legal graffiti programs.\textsuperscript{13}

Forum participants expressed a keenness to continue to monitor the Act, to lobby against elements of the Act that infringe on young people’s human rights, and continue to advocate for fair and proportionate laws that are consistent with the principles of the Charter.

**Recommendation 3** – That the Charter include provisions for mandatory regular auditing of public authorities, to be overseen by an independent body such as the Victorian Equal Opportunity and Human Rights Commission.

**Part D – Term of reference 4:**

**TOR 4:** Whether the Charter should include further provisions with respect to legal proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public authorities made unlawful by the Charter?

5. **Independent cause of action**

Ultimately, human rights in the Charter need to be enforceable within the courts in order for children and young people to have their rights fully protected. A legally enforceable Charter was recommended in the *Seen and Heard* report.\textsuperscript{14} A breach of rights without any other proceedings instituted should allow the individual child or young person to bring a new cause of action.


\textsuperscript{13} Section 7 of the *Charter*, rights may be subject to limitations that: Have a legitimate and compelling aim, are proportionate to that aim; and restrict the right as little as reasonably possible.

A full range of effective, just and appropriate judicial and non-judicial remedies should be available for breaches of all Charter rights.

Any mechanisms of enforcement in relation to breaches of human rights need to be accessible and appropriate to, and have a timely outcome for, children and young people and need to ensure that children and young people can fully participate in enforcement processes and proceedings. Young people do not easily make complaints or seek redress because these are processes that take time and young people may not have adequate information or legal assistance to undertake such proceedings.

**Recommendation 4** – That the Charter includes provisions for an independent cause of action, which is appropriate and accessible to all, particularly children and young people and those experiencing disadvantage.

**Part E – Terms of Reference 5:**

**TOR 5. What have been the effects of the Charter Act on –**

(a) the development and drafting of statutory provisions;
(b) the consideration of statutory provisions by Parliament;
(c) the provision of services, and the performance of other functions, by public authorities;
(d) litigation and the roles and functioning of courts and tribunals;
(e) the availability to Victorians of accessible, just and timely remedies for infringements of rights?

**6. Effects of the Charter on the development and drafting of statutory provisions (5a)**

The pre-enactment dialogue of the Charter is significant for the effect it has had on the final form of some acts in ways that enhance children’s rights. Youthlaw advocates for fair and proportionate laws that are consistent with the principles of the Charter. Youthlaw has contributed to a number of other law reform inquiries and discussion papers where specific recommendations attributed to or referencing the same principles that Parliament and decision makers are required to consider under the Charter. In this way the Charter has contributed to ensuring that Victorian law, policy and practice is more compatible with human rights. These law reform processes have included:

- the Gardner review of the *Equal Opportunity Act*,
- review of the *Mental Health Act 1986*,
- the Victorian Law Reform Commission’s inquiry into Surveillance in Public Places,
- Victorian Law Reform Commission *Review of Victoria’s Child Protection Legislative Arrangements*
- Review of Identity Motivated Hate Crimes
- Severe Substance Dependence Treatment Act
- Bail Reform Project Stage One, Discussion Paper, Department of Justice
- Victorian Law Reform Commission’s report *Supporting young people in police interviews*
- President’s Review of Victorian Civil and Administrative Tribunal
- Draft Model Spent Convictions Bill - Consultation Paper

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• Inquiry into High Volume Offending by Young People - Victorian Parliamentary Drug and Crime Prevention Committee.
• Inquiry into strategies to reduce crime against the person in Victoria – Victorian Parliamentary Drug and Crime Prevention Committee, and
• Homelessness Strategy 2010.

Case-study: infringement penalties for young people under 18 years
Department of Transport approached Youthlaw for advice and input in the early stages of policy development regarding reducing infringement penalties for young people. Such a measure takes into account the special circumstances of children and young people, as enshrined in Section 17 (2) of the Charter. An announcement of reduction in public transport fines for under-18 year olds was made in February 2010.

Limitations of Statements of Compatibility/ Incompatibility
In 2009, the first incompatibility statement was tabled in Parliament for the Summary Offences and Control of Weapons Acts (Amendment) 2009.

The Control of Weapons Amendment Act 2010 allows the search (including strip search) by police of any young person within an unplanned designation area without a parent, guardian or an independent person being present, if this is not practicable (i.e. if it will take the police too long to get them there).

The government admitted that the legislation was incompatible with the right to privacy (section 13) and the right to protect children in their best interests (section 17(2)) contained in the Charter. However, the statement of incompatibility lacked sufficient detail and explanation of the divergence from the Charter provisions.

Recommendation 5 – That the Charter’s Statement of Compatibility or Incompatibility are required to be thorough, on point and informed by international jurisprudence.

7. Effects of the Charter on consideration of statutory provisions by Parliament (5b)

Scrutiny of Acts and Regulations Committee
There is scope to strengthen the role of the Scrutiny of Acts and Regulations Committee (SARC) through better resourcing and a more specific focus for the Committee.

A number of bills have been introduced without sufficient scrutiny and consultation; this is particularly significant where the Bill is controversial or puts limitations on human rights. An example of this was the introduction of the Summary Offences and Control of Weapons Amendment Bill 2010 to which 33 organisations and individuals provided written submissions to SARC, most expressed serious concerns about lack of community consultation.

Recommendation 6 – strengthens the powers of the Scrutiny of Acts and Regulations Committee (SARC) to recommend extension of periods of adjournment to allow for appropriate consideration and community consultation.
8. Effects of the Charter on the provision of services, and the performance of other functions, by public authorities (5 (c))

The Charter is intended to ensure that human rights are given proper consideration at the “front end” of legislative and policy development and decision-making. In this way the Charter provides a single, clear framework for advocates to remind public authorities that respect for human rights must be central to the way they operate. Youthlaw has used the Charter often in its advocacy with public authorities such as Victoria Police, Department of Transport and local government. Over time we are finding the Charter to be a useful framework for negotiation between public authorities and young people and their advocates for fairer, balanced and rational outcomes.

The Charter is an important instrument in ensuring Government departments and agencies are cognizant of the rights protected by the Charter and their responsibility to comply with these. This legal obligation increases government accountability for its actions, decisions, policies and services and provides the community with the opportunity to challenge unfair decisions and actions in a way that would not happen if we were relying on less accessible, sector-specific human rights-based service standards. A vulnerable young person attempting to negotiate with a public authority on the basis of non-enforceable standards can be too easily ignored.

Obviously the Victorian Charter has not remedied or prevented every human rights breach since its commencement in 2007. This positive cultural shift highlighted above, has not necessarily fully flowed through to frontline functions, as frequent reports of abuse of power by police officers, and public transport authorised officers in their conduct towards young people show. The idea of children’s rights needs to be elevated to practical implementation at every level of government and community service delivery. This will only happen over time.

Public authority: Victoria Police

The Charter places legal obligations on Victoria Police to respect children’s rights and take account of the vulnerability of young people under 18 years and the need to protect them. This includes police practices, policies and training, which should properly reflect and promote human rights such as the right to life and the right to protection for families and children.

The utility of the Charter to Victoria Police’s work was expressed by former Assistant Commissioner, Luke Cornelius, who stated the Charter would clearly “explain how police should treat people who come to our care and attention.”

The Human Rights Project at Victoria Police (2006) looked to align police practice with international human rights standards for law enforcement. Victoria Police embarked on a series of discussions across the organisation to establish how officers understand human rights as they relate to everyday police work; the alignment of Charter intent to fundamental principles of policing; and the task of balancing the conflicting priorities of police protection and the limiting of human rights. Part of the process required ensuring that all operational procedures and protocols take into account the requirements to promote and protect human rights.

As part of this initial human rights work the Victoria Police Human Rights Unit approached Youthlaw to discuss a youth focus at the Inaugural Australasian Human Rights & Policing Conference held in December 2008 (for further discussion of this, see Part G, page 25-26).

16 The Age, 20 April 2006
Despite such positive steps, Victoria Police’s Child and Youth Strategy 2009-2013 makes no specific reference to either the Charter or child rights. There is currently no training offered to police that is specific to the issues confronting young people or responding to children’s needs. There is still a need for child rights to be practically enacted in the everyday situations in which young people, including young offenders, find themselves.

**Case-study - Young people searched without a warrant**

In August 2008 Youthlaw wrote to Victoria’s former Minister for Police and Emergency Services, Bob Cameron, raising concerns that the search without warrant powers (in section 13 of the *Graffiti Prevention Act*) may lead to excessive and inappropriate searches of young people.

We brought to the Minister’s attention that although the Act requires details of all searches conducted without warrant to be recorded by police (section 16) it does not specify that police must record the age of the person searched. We expressed our concern that the absence of this information will effectively result in the government being unable to monitor searches in relation to young people.

The Minister wrote back in letter dated 25th August confirming ‘that this information is important to enable an informed judgement to be made as to any impact the search power may have on young people”

**Public Authority: Department of Transport**

Under the Charter, Authorised Public Transport Officers and public transport providers, as public authorities, must act in accordance with the human rights protected under the Charter and give proper consideration to relevant human rights when making a decision or exercising a power. In relation to their interactions with young people, several Charter rights potentially come into play:

- equality before the law (section 8),
- protection from degrading treatment (section 10),
- privacy (section 13),
- protection of children (section 17), and
- right to liberty and security of person (section 21).

Through Youthlaw’s casework and consultations with young people, it appears that these rights are often not upheld in the work of Authorised Public Transport Officers or public transport providers. One of the most powerful findings of a survey of 352 young people in July 2010 was that over 70% of young people either agreed or strongly agreed with the statement “There is a problem with how authorised officers treat young people using public transport”. It appears that inspectors tend to stereotype young people as “trouble makers” and fare evaders” and target them accordingly.

Since the introduction of the Charter the Department of Transport has undertaken to improve conduct of authorised officers, including a re-drafting of the Department’s Code of Conduct in consideration of the Charter; reviewing initial and refresher training programs for Authorised Officers to make them Charter compliant.

**Public authority: Youth Justice**

The Victorian Ombudsman has been particularly dynamic in some of his own motion and other investigations into various public authorities’ compliance with the Charter in their treatment of children and young people. For example in his “Investigation into conditions at

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the Melbourne Youth Justice Precinct", the Ombudsman found a culture of widespread disregard for and limited compliance with operations and legislative provisions and procedures, lack of due regard for responsibilities and duties under legislation and the Charter. On a positive note, the implementation of the Ombudsman’s recommendations designed to ensure the Precinct is more Charter compliant, has been a rent focus of the Director, Youth Justice Custodial Services, Department of Human Services.

9. Effects of the Charter on litigation (5(d))
Contrary to fears that the Charter would “open the litigation floodgates”, Youthlaw has only used the Charter in litigation sparingly. Much of our litigation work is in the criminal law area and it is worth noting that the Charter has been only used in the most serious of cases and often in an endeavour to achieve direct benefits for clients, but also for other young people affected by the same issue.

Case-study: Tyler Cassidy Inquest
In 2009 Youthlaw made the decision to seek leave to participate in the Coronial inquest into the death of Tyler Cassidy. Tyler Cassidy, a 15 year old teenager, died on December 11, 2008 as a result of a fatal police shooting. Our legal submissions relied heavily on human rights law including the Charter and the United Nations Convention on the Rights of a Child. The Coroner denied our request for leave to participate.

Case-study: Right to independent investigation of police misconduct
A number of young people who approach Youthlaw’s advice services, particularly of African backgrounds, report incidents of police abuse of powers, assaults by police and harassment.

Many young people expressed a reluctance to approach the local station or Victoria Police Ethical Standards to make complaints directly because of a perceived lack of independence and direct experiences of dissatisfaction with the police internal complaint process. In cases where young people have attempted to contact the Office of Police Integrity (OPI), in order to avoid lodging a complaint directly with Victoria Police, the OPI has frequently refused to take on the complaint.

In 2010 we initiated a test case arising from a decision of the OPI not to investigate a serious complaint against police by a young male person. This case is proceeding with the assistance of pro bono advice from Counsel and pro bono solicitor assistance. The case will test whether decisions by the OPI can be appealed to the Supreme Court under the Charter for failing to give consideration to human rights under the Charter and whether there is an obligation inherent within the Charter for the OPI and the State of Victoria to conduct an independent and effective investigation of serious police complaints.

10. Effects of the Charter on the availability to Victorians of accessible, just and timely remedies for infringements of rights? (5(e))
Youthlaw reiterates its comments made in Part D (p8) about the need for an independent cause of action.

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18 "Investigation into conditions at the Melbourne Youth Justice Precinct", October 2010 under powers from the Whistleblowers Protection Act 2001, p80. The Ombudsman found specifically that the Operations Manual is outdated and poorly adhered to (72), the vitally important Communications Book is not properly used (72), the emergency aid pouches that staff are required to carry are not properly maintained (78), many current and former staff do not have Working With Children Checks (WWCCs), and there is no adequate and consistent system or policy for recording and monitoring WWCCs. This undermines the protective purpose of the WWCC (79).

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Part F – Terms of Reference 6:

TOR 6: What, if any, have been the overall benefits and costs of the Charter?

As the Charter is in its early stages of operation, many of the long term economic benefits to flow from Charter compliant practices will not be measureable for the purpose of this review, but rather at the point in time of the 8 year review. And given the Charter has only been in operation for just over 4 years, any assessment of impacts to date is likely to be cost heavy, noting the considerable investment in start up and training for agencies. Victorians will benefit economically from this prudent investment over the next 4 years.

Youthlaw accordingly limits our comments to non-economic benefits, namely social impacts related to increased protection of human rights for Victorians. The major benefits or social impacts will derive from longer term cultural change in the way public authorities protect rights and how young people and their advocates interact with government in relation to the protection of their rights. Below we provide some qualitative evidence of this cultural change that is already in motion.

11. Creating a human rights culture in public authorities

The cultural change that the Charter has brought about within Victorian Government is evident in the case studies cited above (see our earlier comments at Part E, page 10 -12). Cultural change is hard to achieve within any public office, let alone across a number of government departments, and it is a process that can take generations. Youthlaw feels that these changes would not have occurred so rapidly were it not for the Charter.

12. Creating a human rights culture amongst young people

When armed with knowledge of the Charter, children and young people feel more confident that they have a voice to challenge unfair and unjust decisions, where previously there was no centralised legislative framework to underpin their grievances.

The Charter provides a clear and accessible framework within which disadvantaged young people can seek to have their voices heard, become familiar with their legal rights, and advocate for fairer outcomes and gain a sense of empowerment through this knowledge and process.

Case-study: REAL Rights project

Since the introduction of the Charter, Youthlaw has been actively involved in project work “The REAL Rights project “ aiming to educate and engage with disadvantaged and marginalised young people around their legal issues within a human rights/ Charter framework, and supporting them to put their views to government and strategic decision makers.

Young people participating in the REAL Rights Project gave unique perspectives of how they have experienced the law, their human rights issues, and also how they have used human rights to advocate for change. The project highlights the great potential to promote a culture of positive and respectful decision making by all arms of government where policy and law reform processes are informed by young people’s voices and experiences. Below are a brief description of two groups of young people engaged in the REAL Rights project.

Young people experiencing homelessness

The Inaugural Australasian Human Rights & Policing Conference in December 2008 provided a platform for young people to reflect on their experiences with Victoria Police in light of the Charter and present their ideas on how to strengthen police’s Charter compliance.
In the lead up to the conference, Youthlaw and Frontyard Youth Services held consultations with homeless young people which linked young people’s concerns about inequitable access to public space, the impact of stereotyping young people, the misuse of police discretion & how police engage with young people at the first point of contact, as Charter related issues. Two of the young people who had experienced homelessness were supported to present their perspectives and ideas at the conference workshop.

Responses from the conference audience, made up predominately of officers included:

- “We want to create opportunities for police to listen to young people”
- “We need to try different mechanisms to try and get you to talk to us”
- “It’s also about how we talk to young people on a daily basis on the street”

Following on from the conference, members of Victoria Police approached Frontyard Youth Services in 2008 about establishing forums for improved dialogue between police & at-risk young people, which resulted in the production of a DVD, ‘Beyond Appearances’ which will be used as a professional development tool designed to complement current police training.

**Young people with disabilities - Youth Disability Advocacy Service (YDAS)**

After running an initial Charter education workshop, Youthlaw supported a working group of current students and recent graduates (members of the Youth Disability Advocacy Service (YDAS)) affected by barriers to tertiary education for young people with disabilities, in particular the lack of funding for, and the irregularity of, attendant care services in Universities & TAFE. The group developed strategies to address this issue using the Charter as an advocacy tool, which resulted in the development of submission, letters and presentations to education networks and relevant ministers. Three members of the group presented an overview of the issues to members of the Victorian Higher Education Disability Network. The presentation emphasised the human rights impacted by current federal, state and university policies. One participant’s testimonial is particularly insightful in its discussion of the invaluable experience of advocating for one’s rights using the Charter:

“I’ve found that my involvement with YDAS and through this project to be sort of a watershed moment for me, because I haven’t really had the opportunity to consider what my rights are… I’ve been fighting against the system my whole life and didn’t realise that there was these supports available for me to utilise in order to fight for my own advocacy rights & to fight for other people.” (REAL rights project participant).

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**Part G – Terms of Reference 7:**

**TOR 7.** What options are there for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria?

13. **Summary of Recommendations for reform and improvement**

**Recommendation 1** That the Charter adds economic, social and cultural rights, as detailed under the International Covenant on Economic, Social and Cultural Rights.

**Recommendation 2** The Charter includes rights detailed under the Convention on the Rights of the Child, in particular a right to participation (article 12 CRC) in order to:

- reflect the specific needs and circumstances of children and young people;
- increase children and young people’s awareness of their human rights and their right to free enjoyment of these rights; and
- guarantee & enhance the participation of children and young people in public life; &
**Recommendation 3** That the Charter include provisions for mandatory regular auditing of public authorities, to be overseen by an independent body such as the Victorian Equal Opportunity and Human Rights Commission.

**Recommendation 4** That the Charter includes provisions for an independent cause of action, which is appropriate and accessible to children and young people.

**Recommendation 5** That the Charter’s Statement of Compatibility or Incompatibility are required to be thorough, on point and informed by international jurisprudence.

**Recommendation 6** Strengthen the powers of the Scrutiny of Acts and Regulations Committee (SARC) to recommend extension of periods of adjournment to allow for appropriate consideration and community consultation.

In addition to the recommendations summarised above, we make the further recommendation regarding public education campaign. The link between human rights education and the promotion of a culture of respect for and protection of human rights is well acknowledged. It is important that a public education campaign is appropriately resourced.

VEOHRC has an education unit running a variety of human rights workshops that inform a wide range of Victorians, including students, the private sector and community organisations, about Victoria’s human rights charter. This has been complimented by ad hoc and under-resourced, educative programs run by community organisations, including community legal centres.

**Recommendation 7** - The Charter be accompanied by a well resourced public education campaign that is accessible to all children and young people and their families.

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19 See, for example, UN Human Rights Commission Resolution 2004/71.

20 For example, Youthlaw has been running the REAL Rights project for young people, the Eastern Community Legal service has developed a play, *Fred’s Fair Play*, and *Human Rights are Aussie Rules*. West Heidelberg Legal Service offer Character training for its local community. Berry Street Victoria, CREATE Foundation and Victorian Aboriginal Child Care Agency’s *Embedding the Charter Project* is designed to make the Charter more understandable and accessible for children in Out of Home Care.